

BOARD OF ZONING APPEALS

MINUTES

DECEMBER 14, 2004

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on December 14, 2004, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

DWIGHT GREENLEE, BICKLEY FOSTER, ERMA MARKHAM, RANDY PHILLIPS, JOHN ROGERS, JAMES SKELTON. JAMES RUANE, in at 1:38 p.m.

SHARON DICKGRAFE – Law Department present.

HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER, Chief Planner.

SCOTT KNEBEL, Secretary.

ROSE SIMMERING, Recording Secretary.

SKELTON Item #1, August 24, 2004, BZA meeting minutes.

MARKHAM moves, PHILLIPS seconds to approve August 24, 2004, BZA meeting minutes.

Motion carries 6-0.

RUANE Item #1, November 16, 2004, BZA meeting minutes.

MARKHAM moves, GREENLEE seconds to approve November 16, 2004, BZA meeting minutes.

FOSTER I was not able to make the November 16, 2004 meeting, but I was available for a special meeting if one was called.

Motion carries 7-0.

RUANE Item #2, BZA 2005 Yearly Calendar.

FOSTER moves, SKELTON seconds to approve BZA 2005 Yearly Calendar.

Motion carries 7-0.

RUANE Item 3, Case No, BZA2004-70, Appeal of an administrative interpretation to a CUP (DP-106) by the Zoning Administrator dated August 15, 2004, pertaining to an emergency room proposed for DP-106, Northwest Village Community Plan. Appellants, Tegra Healthcare Properties, Attorney at Law Adams & Jones, c/o Patrick Hughes. General Location at the northeast corner of 13th Street North and Tyler Road.

KNEBEL, Planning staff presents report and pictures of the site. The CUP amendment was approved by the Planning Commission and by the City Council. My understanding is that subsequently an appeal has been filed with District Court by the property owner to the east regarding that approval.

The process of appeals is that it is the burden of the Appellant to demonstrate to the Board that the decision rendered or interpretation by the Zoning Administrator was reached in error. The Appellant has a 15 minutes time period by which they can do that. There is also 15 minutes allotted to the Zoning Administrator or his representative to respond to statements made by the Appellant, and then at that point, the Board would render their decision. I will answer any questions in regards to the background.

RUANE What is the impact of the District Court? What impact would that have on our consideration today?

DICKGRAFE The applicant has apparently indicated to legal counsel in my office that an appeal has been filed regarding the MAPC changes to the language of the CUP. I have not seen that appeal, and to my knowledge, have not been formally served with that appeal. So that leaves this Board in limbo. This Board can hear it. It can defer it. It could deny it, and all of those would be appropriate courses given the Bylaws of the Board.

RUANE We would be within our rights to simply ignore the fact that the appeal has been filed and at this point has no influence of impact upon our action here today?

DICKGRAFE I think you could chose to take that course or that you could decide that this decision has already been made and that the CUP language has been changed and therefore any decision by this Board is the subject of that appeal. I think either of those avenues are certainly available to the Board. Frankly, it might be appropriate for the Board to give the applicant, as well as Kurt, 3-5 minutes to address that issue before the Board goes ahead and proceeds with testimony and all of the other issues, if that is how the Board wants to proceed to decide whether or not this issue should be before Board at this point.

FOSTER I think we should do that.

RUANE Is that the preference of the Board.

MARKHAM moved SKELTON seconds to allow for each party to have three minutes to present testimony whether this case should be heard before the BZA Board.

Motion Carried 7-0.

PATRICK HUGHES, ADAMS & JONES With respect to the question to whether you should make a decision on this, let's talk about the concept of what it would mean for you not to make a decision. The reason you might not is if you were to conclude that your decision would be meaningless, it would be moot, and you would have no impact. If that were true that there would be no legal effect to your decision then there would be no reason for you to act. That is not the situation that you are in.

We have a decision by the City to amend the CUP, but that is not effective or is not final yet because that has been appealed to the District Court. We do not know right now, as the applicant, whether ultimately at the end of the day the CUP will be amended or will not be amended. We will not know the outcome of that proceeding until it works its way through District Court and potentially through Appellants Court as well. However, if this

Board decides that no amendment is necessary to the CUP then it doesn't matter whether the amendment was properly made or improperly made. If no amendment is necessary, then it is the action of this Board that will resolve whether the construction can go forward. So the Board is not in a position where it has no legal effect but has a significant legal effect.

It was in the interest of moving this project forward that in addition to appealing to the BZA that Tegra pursued an amendment to the CUP. The question of the amendment to the CUP is in a sense narrower than the question before you. You are being asked to render an opinion on the impact of the uses that are listed in the CUP. Is a CUP that was adopted under the Code as it existed in 1980 one that limits uses and development standards, or does it simply limit development standards. That question will never be answered in an appeal of the decision to amend the CUP made by the City. So for those reasons your decision here will have a legal impact and the question is not moot.

JOE LANG, ATTORNEY FOR KURT SCHROEDER ZONING ADMINISTRATOR Kurt's decision, an administrative interpretation is on appeal here, the CUP as it has been amended by the City Council is not part of Kurt's presentation and in essence we don't feel we have a dog in this fight. You may want to hear from Mr. Sherwood, and I think he may want to address this issue, however.

ROGER SHERWOOD I represent the Northwest Centre, the one thing that we do concur with Mr. Hughes on is that we think this matter should be heard, and we see that there could be a very many good reasons why the decision of this Board would be appropriate in this matter, and we would prefer that this matter be heard by the Board, and we believe that it is not a moot point.

MARKHAM If your appeal rules that the CUP is right and the amendment, amends it, will it amend it in such a condition whereas you will not need a decision from anyone else? If it is said yes, that he made the amendment, and that the administrator made the right decision in his interpretation of the CUP, will you need an opinion from this Board?

HUGHES If the District Court decides that the amendment was proper then the current plan of the applicant with respect to the property can go forward without a decision of this Board.

FOSTER I am not sure that we have heard why it will go forward. I hear them requesting that it be heard, but I am not hearing why it should be heard by this Board.

DICKGRAFE If in fact this appeal concludes that the amendment was appropriate and that the amendment followed all of the procedural requirements, then the CUP is amended and then Kurt's interpretation is moot. It doesn't matter what Kurt interpretation of the CUP to mean because that CUP no longer exists, and that language no longer exists. If this goes through and the District Court determines that the CUP was not properly amended, then it could leave this Board with the unfortunate ability to overrule what the City Council has already done. Why I brought this to the Board's attention is that I think that you run the risk of, by saying that if the amendment wasn't needed by this Board, then the CUP as amended wasn't necessary so you could be overruling the City Council action.

DALE MILLER What I would add is, based on the gentlemen's comments, I think why the applicants are asking you to hear it today is if you decide not to hear it then time is the issue. They will have to wait for this to go through the appeals process to get an ultimate answer. If you hear it today and render a decision then there is an answer at least as far as this part is concerned.

DICKGRAFE It will take several months, and in some cases a year or more, for an appeal of this nature to wind its way through District Court. So certainly the applicant does have some interest in having this decision to either appeal this decision also or to live with this decision and pursue the appeal of the CUP.

MARKHAM Because if we go ahead and rule in agreement with the applicant and say this is incorrect, will they be able to proceed with their plan before the court renders a decision?

DICKGRAFE If this Board determines that Mr. Schroeder's interpretation was not reasonable, then my interpretation would be that he could go ahead and proceed as planned. I would defer to staff or Joe Lang. The CUP has been amended so I think that would frankly cover all of the applicants bases.

MARKHAM What if the court ruled the other way and he started on the plan?

DICKGRAFE Then you run the risk of having inconsistent results.

RUANE Your remarks earlier when you referred to this appeal, you were referring to the District Court Appeal challenging the CUP modifications occurred since our last meeting?

DICKGRAFE Yes.

RUANE The particular action that occurred, was that through the MAPC and through the City Council process? The CUP itself was specifically modified to allow the emergency use that is the narrow issue of our focus?

DICKGRAFE Yes.

LANG The moot decision is not a big issue for us, but you do have a situation which is not totally unheard of where an applicant is pursuing all of its potential remedies. They are pursuing a remedy of an interpretation of a current CUP, and they often do that because they can't get an amendment for some reason or other. But this time they are also seeking a CUP amendment, which the MAPC and City Council has approved. So while the results could conceivably be inconsistent if both of these go forward, I do not think that they would be legally inconsistent because if this Board makes a decision that is either final here or itself is appealed to the Court, this will be an interpretation of the old CUP. What is in the courts now is the new CUP language, I see two separate cracks, and I see the applicant as merely trying to cover all possibly bases and when on one track or the other.

RUANE The appeal that has been filed before December 9th was filed by whom and what particular challenge?

LANG As I understand, it was filed before the 30 days expired from the City Council's action on the CUP, and it is an appeal of the reasonableness of the City Council's decision on the CUP. I am assuming it was filed by Mr. Sherwood, but we haven't seen it yet who represents the owner of the rest of the CUP or shopping center.

FOSTER It seems to me that the case for the MAPC and the court case with it being unsettled, I don't see how we can say that it makes this moot. We do not know the outcome of it, and they don't know the outcome. We can defer this for a year or more, but it seems that they filed in proper order, and I think it is important for them to get an answer to this.

FOSTER moved GREENLEE seconded to hear the administrative appeal.

Motion Carried 7-0.

PHILLIPS I am going to have make a clarification. In understanding this thing and listening, I believe I am going to have to declare a conflict of interest. I do have a relationship with the Appellant here on the adjoining property and, therefore, I believe it disqualifies me. Had the Board decided not to go on and hear this thing I could have stayed.

DICKGRAFE According to the rules if you haven't abstained then your silence will be counted as an affirmative vote per our Bylaws. He cannot vote but it will be voted as a yes based on Article II Section E.

RUANE So Mr. Phillips will abstain on the rest of this case. Typically it is customary to give 15 minutes to the Appellant and 15 minutes for Mr. Schroeder or City staff. Given the early and obvious involvement of the appellant in the District Court case, that being Mr. Sherwood, is there a recommended reallocation of that time since we have three interested parties?

MILLER The minutes are by policy, so as a group if you want to modify the amount of time that you provide, you want to be equal.

RUANE My suggestion would be that we allow three fifteen minute sections and encourage you all that if you don't need to use the full time, but it seems to me that the players that we know, that we have, and the level of involvement at this point, and that this might be a full and fair discussion and record.

FOSTER moved RUANE seconded to give three fifteen minute periods to listen.

Motion Carried 6-0-1.

PATRICK HUGHES I am here on behalf of Tegra Healthcare Properties, the Appellant in this matter. This case concerns whether or not Wesley Medical Center can provide emergency medical services to west Wichita in part of the vacant Albertsons Grocery Store at 13th and Tyler.

Absent of valid legislative restriction, like a zoning ordinance or statute, owning private property means that we have the right to use it as we chose, free from interference by the

Department of Central Inspection or any other government entity. In this case we have asked for an opinion for confirmation that we can use “LC” zoned property for a use permitted as of right in a “LC” zoning district. The Zoning Administrator has said no. The fundamental question in reviewing his answer, is by what power? By what power has the City imposed some restriction on land use more severe than the restrictions applicable to “LC” zoning districts generally. By what power can the Zoning Administrator replace provisions of a CUP that were written out of it in 1985? By what power can the Zoning Administrator declare that, for the purposes of the Zoning Code, the words “major” and “minor” are synonyms rather than antonyms. The answer to each of these questions is by no power. The decision of the Board of Zoning Appeals should be to reverse.

The 1980 CUP in this case did not limit the uses to which property could be placed within the CUP. Instead, what it did was to set development standards. By development standards we are talking about setbacks, height limitation density, and screening. The Office of Central Inspection wants you to expand the City’s power by excluding from this CUP all land uses other than those the original CUP applicant had in mind when it applied for the CUP twenty-four years ago. It cannot do that.

Under the Zoning Code as in effect at the time of the CUP, CUP’s regulated development standards but did not regulate land uses. How do we know that, and where do we look? The Zoning Administrator invites you in his submission to look to the collective memory of the staff of the MAPD and the Office of Central Inspection. I submit to you that the Zoning Code, as it existed in 1980, is the only appropriate place to look to determine whether the government has the power to restrict land use to a CUP that was approved in 1980. If the Zoning Code does not give the government the power to regulate land use through a CUP at that time, the lack of power is not cured by the Planning Department pretending to exercise it, no matter how long that error has persisted.

What does the applicable Zoning Code actually say? That is what matters here. It says the applicant for a CUP has to submit the “intended general uses” and “proposed general type use”, thus it says that the applicant must provide information, information about what the applicant is at that time intending to do on the property. The Zoning Code says nowhere that this list is a limitation on the uses that can actually be made. To the contrary, it says expressly, “All uses permitted in the commercial zoning classification in which the development is proposed shall be permitted.” Because this piece of property that we are looking at is on a corner at all relevant times, this portion of the CUP has been in a “LC” Light Commercial zoning district, and that district allows the type of use that Tegra is proposing as a matter of right.

The Zoning Code as in effect in 1980 is not mysterious about what CUP’s regulate. In its introduction for planned commercial development it lists what CUP’s regulate and does not include land uses in that list. It talks about what intent and purpose of the section is and how it accomplishes that purpose. It accomplishes it through standards and provisions which establish requirements as to lot coverage, height, setback, and screening, which permit review of the size, shape and location of such facility. Nowhere does it identify uses being something that would be regulated by the CUP. Of course we know from what we saw earlier that it says, “any use allowed in the commercial zoning district shall be allowed in the CUP.”

Now whether you agree with it or not, good reasons exist for CUP's to regulate development standards but not land uses. That way they can control the appearance and layout of the physical structures and allow the marketplace to determine what commercial uses will ultimately fill those structures. CUP's simply provide under that system assurance that the physical layout of the facilities will be attractive and coordinated. Contrary to Mr. Sherwood's characterization of our argument in his written submission, the development standards of the CUP are binding and its restrictions are binding now. If a particular use does not fit those standards, cannot operated under those development standards, it won't be developed. As a result while CUP's under the 1980 Code did not limit uses directly at a practical level, they did limit uses indirectly because only those uses that could profitably operation under the CUP development standards were going to develop.

Perhaps the Zoning Administrator and Mr. Sherwood are correct when they argue in essence that CUP's might be a more comprehensive and a better planning tool if they control both development standards and permissible uses. That argument might explain why the Zoning Code was later changed to eliminate the statement "That all uses permitted in a "LC" zoning district shall be allowed." And to allow for the current state of affairs, where new CUP's do act as restrictions on land uses. But the fact that the controlling allowed uses through a CUP might be a good idea doesn't mean that it was the law in 1980 when this CUP was adopted.

Our second point is that the proposed use section of this particular CUP dealing with this particular Parcel, Parcel 4, was completely eliminated in a 1985 amendment. The Office of Central Inspection wants you to expand its power by writing into the paragraph of the CUP governing Parcel 4 language that was written out of it in 1985. It can't do that. Prior to the 1985 amendment, the section of the CUP concerning Parcel 4 contained a list of proposed uses, but that section was completely replaced in 1985 when the amendment said Parcel 4 shall be revised to read as follows "and it did not repeat then when it said that it will be revised to read as follows a list of proposed uses. Instead it listed nothing about uses and only included development standards. This is consistent with the view that the CUP controlled only development standards and not uses, and that the proposed use list was informational. But it also means that even if that isn't true that the proposed use, and only the proposed uses were allowable in 1980, the situation changed in 1985, when the proposed use section for Parcel 4 was removed from the CUP. You will see the document that I am talking about in the submission that I presented to you.

If the CUP in 1980 does regulate uses, then the correct test, to determine with the use that Tegra proposes is allowed, or not allowed is whether it would work a major change to the development plan as a whole. Mr. Schroeder and his written response does not seem to contest that this is the correct test under the Zoning Code, that imposes the restrictions to begin with, and under the CUP, whether there is a substantial deviation or major change to the development plan as a whole. Instead, he argues that his believe is that small deviations or minor changes are substantial and major. If by definition a change that is "minor" is not "major" or "substantial", the Department of Central Inspection wants you to expand its power over land uses by finding that "major" and "minor" are synonyms rather than antonyms. You can't do that. Mr. Schroeder's written response also relies on an internal and informal Central Inspection Department policy that was never permitted by the Zoning Code.

The role of this BZA is to act as a check on such policy created by administrative agencies. The fact that the "MAPD and others", on whose past practices Mr. Schroeder says he relies, is the fact that they only have the authority granted to them by the Zoning Code. They don't have the power to create an informal procedure to impose new regulations not found in the Zoning Code.

Thus, we are left with the question of whether the use of a small portion of one building on Parcel 4 for emergency services is a major change to the development plan as a whole. I submit that it is not. We are not here today to ask for some special treatment or variance from a duly imposed zoning restriction. We are here to insist that private property owners rights be respected and that the Department of Central Inspection not be allowed to take upon itself an expansion of its power by converting a landowner's proposed uses under a CUP 1980 into regulations that are binding. Not be allowed to expand its power by reading back into the CUP language that was removed by an amendment in 1985. Or say that "major" and "minor" changes are synonyms. The correct answer to the question that we ask the Zoning Administrator is that it is a matter of right of one portion of one building on Parcel 4 for the CUP can be converted to provide emergency medical services to west Wichita without amendment to the CUP.

I realize that the argument that I am making to you this afternoon is a unique one that you don't confront very often, and perhaps not at all, and the easy thing to do is to look at this case and say, when you apply the test that Mr. Schroeder applied, do you find that this is more intensive or is not more intensive. What we are asking you to do is to look beyond that and to look at what the real legal restrictions are on this property. This property that was not subject to a CUP under the current Code where CUPs regulate uses, but was subject to a CUP under the code where CUP's regulated the development standards. If whatever commercial use would fit within those development standards, if it was within the "LC" zoning permitted uses, was appropriate.

KURT SCHROEDER OCI, I am going to be referring to the November 5, memo that I sent to you that you have in your packet in trying to respond to the original interpretation as well as to some of the comments that have been made here by Mr. Hughes.

First of all, in my original interpretation letter, obviously that went into a lot of detail and gave you a lot of background as to why I made that decision. The November 5, 2004, letter I expanded that based upon some of the arguments that Mr. Hughes had made.

I did go back to the 1980 edition of the Zoning Code, which is in some of the attachments. When it talks about planning commercial development in the 1980 Code, there is a number of places where it refers to more than just development standards. It refers to the character of the development and actual uses within that development in the very first paragraph on page 1062-9. For Planned Commercial Development at the end of that paragraph it says "The character of the commercial development should be appropriate to the neighborhood and conditions and safeguards should be provided to ensure that the development will minimize any diminution, if any in value of surrounding residential property." Further below on that same page on 2a), "When "LC" or "C" commercial district zoning is requested the applicant shall submit to the planning commission, with their zoning application, a preliminary development plan covering the entire tract proposed for development, indicating existing conditions, existing and proposed development." It does talk about development standards and also that plan

should indicate facilities and their intended general uses, and gives examples, (i.e., office, shopping center, recreation center, motel and highway uses, etc.) for the development.

If land is already zoned “LC” or “C”, it talks about approval by the planning commission a preliminary development plan prior to any building permit being issued until that preliminary development is approved. It talks about in 3d), “In cases where community unit plan development proposes a mixture of commercial uses and more restrictive, such as multiple family dwellings, offices, and other uses permitted in other zones.” This is a mixed use community unit plan with residential development on the north sign office and commercial. “The development plan shall indicate the proposed areas and their proposed general type of use (four-plex, garden apartments, care home, etc.)” So again a reference to development plan.

I think that since the Community Unit Plans have been in place, yes I did refer to kind of what the practice has been here, obviously ever since the first ones that were adopted have always had discussion that these development plans include specific uses that further limited or restricted what was allowed by the underlying zoning. I don’t think that we have or can find one that has not done that.

In terms of his Item 2, he said that the 1985 amendment, a number of adjustments had been done up to that point on that CUP, that basically eliminated any kind of use language to our Parcel 4. I simply disagree with that. They do not request in that adjustment, or some adjustments that lead up to that, and adjustments were being done back in the early 1980’s to CUP’s without formal amendments. It did not require a change in the use, so basically what that was asking is that you modify the CUP to make the language consistent with the approval of the adjustment request and the other amendment request which did not include a request to change the uses. So as is done in most every case, the applicant and the person who prepares that CUP then modifies the language that was approved, and in this case it did not modify the use language, so I simply disagree with his contention that all uses on Parcel 4 were simply eliminated.

The substantial deviation and major change, you do find that language in the 1980 version of the Zoning Code however, I have indicated that there is a history back in the 1980’s of Administrative Adjustment processes that was formalized with the adoption of the Unified Zoning Code in 1996, which speaks to the fact that you can do what are maybe less than major deviations from the original CUP approvals to administratively approve with some process, and procedure and posting of a sign, etc., that would allow minor deviations from a approved CUP.

In my interpretation letter what I required was that it was not a use allowed by right, by the approved development plan for this CUP as it was approved in 1980, adjusted several times in the earlier 1980’s, and then amended in 1985. None of that language on uses allowed this kind of use. That the use that they were proposing was indeed more intense than the types of uses, that were specifically listed in this CUP for Parcel 4.

I did say in my interpretation letter, I did not say they had to amend it, but I did say they would have to at least request an administrative adjustment to this CUP that may have allowed what would have been considered a minor deviation from the approved plan, but that did not happen. My understanding was that since there were several Parcel owners on this tract in the CUP they could not get the other owners signature, in which the case the current language of the Zoning Ordinance would require, and our process would

require, that they proceed with an amendment since they can't get the other owners approval to proceed with an administrative adjustment.

ROGER SHERWOOD, Represent NORTHWEST CENTRE We would adopt by reference the comments that were made by Mr. Schroeder, and we agree with his position. The package that you have today, the last document in that package is the brief that we have filed on this matter. I would like to state just briefly what has not been discussed at any of the hearings, and that is the fact that my client has the other portion of Parcel 4 which has the CUP provision that we discussed. My client purchased the property based upon reliance that the CUP was a binding requirement for the owner of the property. Now the situation is that in spite of the fact that my client bought it with that understanding, the City Council has chosen to make the decision that they did, which is why we have appealed it.

Regarding the administrative interpretation, Mr. Hughes has taken the position that there are three reasons why Mr. Schroeder's decision is in error. He states in his position that the CUP of the 1980's were not binding upon the owners as to the uses which were reflected on the written plan. Tegra claims that owners under the older CUP's may disregard the proposed uses of those plans as suggestions or ideas, or possibilities or maybes. We submit that all of the plans of the 1980's would be no good in Wichita if that decision was followed. Tegra does not own this property. They have never owned this property. They come in now and say that 25 years ago Wichita was doing it improperly, and they were not using the CUP's, following them, and we submit that they are not in a position to challenge that. As stated by Tegra in its application, "Appellant believes that it's proposed use for office and emergency treatment is permitted as a matter of right and does not require either an administrative adjustment or an amendment of this CUP." If that is the case and they have that as a matter of right, why did they not simply apply for a building permit? Why did they come asking for the administrative interpretation? They are stating that the CUP that is in existence did not, and does not, have any effect on their action in this matter. I think they have taken the fact that they have asked for an administrative interpretation and then appealed it speaks for itself. They are not following what they have stated in their brief.

Their second point is that the 1985 adjustment, which required an updated CUP plan, failed to again list the proposed uses. As a result of which, no uses are precluded, and presumably no uses were permitted. We simply are left with a uniquely administrative white elephant, if that is the case, in which it cannot be amended because there is nothing to amend, because in that 1985 amendment the uses were not stated. We submit that position is unattainable.

Finally, Tegra has taken the position that an emergency room is allowed as personal service, which typically includes beauty shops and barber shops. We submit that an emergency room is a far cry from a beauty shop and barber shop, and it is not a personal service. For these reasons we submit that this appeal should be denied.

MARKHAM Mr. Sherwood, I was wondering about the CUP between 1980 and the adjustment in 1985. Would the CUP work as, for example like the constitution, the original law and when it is amended does not the amended section supercede the old law? So even if it was the uses that you amended, would we not have to follow, if we were to do something today, wouldn't we have to follow today's law? Even if it was amended, because I heard Mr. Hughes say that he did not have to follow the amended section

because the 1980 section stated did not have permitted uses, so what I am asking you is even though it did not have permitted uses in 1980's, and it was adjusted or amended in 1985 to cover permitted uses, would we not have to follow the current thing that is in use today?

SHERWOOD I would think that you are correct. But it is our position that in the 1980's there were required uses permitted.

RUANE Who has Exhibit (G)?

HUGHES That was an exhibit in my submission. I would turn to Exhibit (G) with that recommendation. There are three, I guess, related responses to Commissioner Markham. The first is premised on the idea that between 1980 and 1985 was when the change happened to the Zoning Code to remove the language that said that any use that is allowed within the Zoning district will be allowed in the CUP. That is not when the change occurred, and so we don't have the new law applicable at the time of the 1985 amendment. In addition, we are talking about the addition of new restrictions on private property, and there is no legislative act that was targeted to this property that was reported at anytime to impose new restrictions that had not previously existed. So as a landowner, one has the right to continue to use one's property as one wishes until there is a valid restriction that is affirmatively imposed on that property. That did not happen in the 1985 amendment.

Instead, if you look at Exhibit G, under subparagraph G, the complete revision of the section of the CUP titled Parcel 4, it does not say that parcel 4 will be revised to add the following language or to make the following changes. It says Parcel 4 shall be revised to read as follows. Parcel 4 previously in that section of the CUP had a list of uses that were "proposed".

RUANE Mr. Hughes, what precisely is Exhibit (E)?

HUGHES Exhibit (E) is an example of a CUP that was adopted recently under the current Zoning Code. You will find that rather than listing uses under the title uses that are "Proposed Uses", under paragraph (3) it list uses under "Permitted Uses", and I suggest that is meaningful that the word "permitted" is now used here rather than "proposed" as was in 1980. So what it shows us is that there has been a difference in a way the CUP's express what restrictions they impose. That follows the change in the Zoning Code, when there was no reference in the Zoning Code to regulating uses through CUP's, it was informational, and it was listed as not "permitted uses" but "proposed uses". Now we know under the current Code CUP's can regulate uses, and they are not listed as proposed uses anymore, they are listed here as permitted uses.

RUANE So Exhibit (E), like the 1980 Zoning Code or the 1985 Zoning Code for CUP's?

HUGHES The 1985 is not a material issue with respect to what existed in 1980. I am not sure I understand your question.

RUANE If you are looking at Exhibit (E) and you see what happens to be identified Parcel 4, and it refers to 1-4, the four specific categories that were amended in 1985 relative to the Parcel at issue?

HUGHES No, Exhibit (E) is an example of a CUP on a completely different piece of property and has nothing to do with this property in this case. I have included it for the sole reason of demonstrating what a current CUP looks like.

RUANE Now I understand. Please address us only in regards to this specific property only.

HUGHES What it listed was proposed uses in 1980 and a list of general types of use.

DICKGRAFE If you look in the packet of information that was provided at the very end of the packet, which I assume was provided by Mr. Sherwood, you have a section of the Zoning Code from 1980, if you want to interpret the CUP in 1980 as it was written, 28.04.190 Subsection 4 which is the next to the last page in the packet, sets out the permitted uses, which the applicant has been discussing.

RUANE We may get to that, but I am trying to simplify this down to the most bare essentials because frankly Exhibits E, F, & G make these waters very, very, murky. The 1980 CUP did address proposed uses for Parcel 4.

HUGHES Yes, it listed proposed uses for Parcel 4.

RUANE Is it correct that the 1985 amendment to that CUP dealt only with, gross area, max height, max coverage, and max gross floor area?

HUGHES It is true that the paragraph titled Parcel 4, in 1985 was replaced with a paragraph that dealt only with site development standards as you listed. The paragraph Parcel 4 in 1980 had a list of proposed uses and site development standards. In 1985, that paragraph was replaced to read including only site development standards.

RUANE You believe that the modification of the gross area, net area, that the revision of those specifics did as well subplant and erase the permitted uses?

HUGHES If you first conclude that the proposed uses in the 1980 CUP were in fact restrictions of the only uses. If you reach that conclusion, then my point is as you said, that the rewriting of Parcel 4 paragraph in 1985 would have removed those restrictions.

RUANE Can you point to any specific language of the 1985 action on this specific property from which I can reach that conclusion?

HUGHES That is on the back page of Exhibit (G), 2(g). We know that Parcel 4 was a paragraph and that the section of Parcel 4 had in it in the 1980 CUP proposed uses, and it had site development restrictions. It does not say Parcel 4 shall be revised to change in part and make these changes. It says "It shall be revised to read as follows." The literal meaning to "read as follows" is that we are taking what was Parcel 4, that paragraph that included proposed uses and site development standards, and what we are doing is revising it to read this way, read how site development standards. I suggest that if proposed uses were not binding then there would be no need to repeat the proposed uses.

RUANE By failing to reference, or mention, or replace proposed uses could one not reach the inference that from 1985 amendment did nothing to change?

HUGHES Perhaps so, but for a couple of points. What we are dealing with here is the basic right of the landowner with respect to the uses that he can make with private property. So the government has an obligation with respect to imposing limitations on that right. That obligation is to be clear about what they are doing. Here the government has set forth a procedure that says in the Zoning Code that “All uses in permitted in the “LC” district shall be allowed”, mandatory language.

Then subsequently when they replaced the language, the proposed uses, they simply have a list of site development standards consistent with the language that all uses shall be allowed. If in fact somebody at the City Council had the thought when they adopted the 1980 Code that CUP’s would regulate land uses then they should have expressed it so that landowners would have noticed that was a limitation, Number 1, and Number 2, they wouldn’t have needed to change the language of the CUP section of the Zoning Code later to make it clear that now from henceforth that CUP’s were going to regulate site development standards and permitted uses.

RUANE The 1985 action was it the government imposing its will or was it a response to a request to the property owners?

HUGHES It was a response to a request to combine what was Parcel 3 and Parcel 4. There was no action there to impose a new limitation that had not pre-existed. It was entirely a matter to providing benefit at that point to the landowner not imposing a restriction.

RUANE Is your argument that the 1985 action erased all those restrictions?

HUGHES If the 1980 Zoning Code were read to mean that the proposed uses are binding and that is all you can do, then yes, the 1985 amendment removed that list of restrictions.

DICKGRAFE I think the Board needs to look at the Ordinances that Counsel is citing. He keeps citing Subsection A, and I think there is some question if Subsection D, of the 1980 ordinances, since this was a mix commercial, office, and residential, is not the appropriate section. I think he is misleading the Board. The Board needs to look at if you want to look at the applicant’s argument, what the law is that he is citing to you. That is a law that is in your packet. That is a law that existed in 1980. He has repeatedly cited to you Subsection 4a. I believe that is misleading to the Board, and there has least been some testimony presented that this was a mixed CUP. If there was a mixed CUP based on the 1980 Zoning Code, the Board should look at or consider the applicable Subsection D and interpreting whether or not there were uses in the CUP plan and whether or not, as Counsel is arguing, that you then default to all permitted uses in “LC” are allowed. That is true if it is a commercial zoning CUP; however, if you read the language, if it is a split CUP, you don’t actually have that automatic default as Counsel has eluded to today in their presentation.

HUGHES There is no deception here, and in fact, in the presentation I quoted language that comes out of Section D. It is correct that you need to look at 4a and 4d. What Section D tells us is that the requirement such as lot area, setback, uses and heights for uses not first permitted in “LC” or “C” shall be the same in which such use is first permitted. Does that apply here? It might have some application if we were talking about a piece of property that had previously had multi-family zoning on it. But remember that we are talking about a corner here within the 600 feet, and it was

previously zoned for Limited Commercial use. Are we dealing with a CUP that has a mix use development? Yes we are. Does that require that the applicant therefore provide information about their proposed general type of use? Yes it does. Did the applicant do that in this case? Yes, that information was provided. But such a deed does not tell us that it is a limitation on all uses permitted in the commercial zoning classification in which the development is proposed, and that broad statement doesn't apply to a piece of property that is in a "LC" zone and not in a multi-family zone.

LANG There have been a number of questions asked, and I wonder if we can have a chance to respond to them before you go on with new question?

RUANE Yes.

SCHROEDER Back to Exhibit (G), I did want to point out there was actually four adjustments made between 1980 and 1985 to this CUP and they were all made at the request of the developer, and none of those ever asked to change any of the proposed uses or the use list for any of the Parcels in this CUP. What happened with this fourth adjustment, that you refer to here, you can see in the middle of the first page it says to aide in administering the CUP please provide four revised copies of the CUP. Subsequently, and I can show this to you, what the developer who requested all of this submitted was a revised CUP, as requested, that still listed all of the proposed uses for all of the Parcels, and including Parcel 4, as it had existed since it was approved in 1980, and I would be glad to pass this around if you would like to see it.

Also, another interesting point in this same letter on Exhibit (g) on the back page you will note in Item (e), in the back page, Parcel 1 was adjusted in 1983 including excluding a service station use which was allowed by right in Limited Commercial Zoning. Obviously this CUP was excluding specific uses that were approved here and requested by the developer at the time to actually exclude those uses. They were excluded from the uses and probably had to do with some circulation aisle, and driveways, and things like that.

RUANE I want the record to reflect something that has just been handed out. Mr. Sherwood, Mr. Lang, and Mr. Hughes have you all been provided a legal size sheet that refers to Parcel description Parcel 1 and Parcel 4. They all three have been provided that, they indicate.

MILLER We thought it would be helpful with what Kurt was trying to describe. This is a Xerox from the CUP document showing the Parcel descriptions for Parcel 1 and Parcel 4 that had been discussed in terms of the proposed uses and the standards, so we thought it would be helpful if you actually had that in hand.

KNEBEL That is the copy that was submitted has a result of this letter that was issued. The bottom of it says per the adjustment dated 1-11-85.

RUANE So this is the 1985 revisions or revised copies of CUP with those adjustments indicated in so far as it relates to Parcel 1 and Parcel 4?

KNEBEL I believe there are others identified as well, Parcels 2, 3 and 4.

RUANE I'll ask this of Scott or Dale at the top of the backside of Exhibit (g) do the last two sentences of General Provision #4 that were deleted have anything at all to deal with the issues before us today?

KNEBEL I don't believe so. It appears to me just from reading what is left in General Provision 4, it says minimum building setbacks shall be indicated on the plan, and looking at the purpose of this adjustment which was to combine Parcel 3 and Parcel 4 to eliminate setback restrictions along the line of Parcel 3 as soon as the last two sentences that were deleted had to do with that setback requirement. I can look through the file here and find it.

RUANE Is it the consensus that the deletion had to do with setback requirements or similar adjustment rather than use adjustments?

KNEBEL Right.

HUGHES The general provisions section of the CUP was something separate from the sections that deal with each Parcel. So General Provision 4 is unrelated to what we are looking at when we are talking about the paragraph dealing with Parcel 4.

MILLER There were a number of comments made about how adjustments or certain words were used, and maybe we can explain how these things are used, and then you can try and understand some of the terminology and process.

In general, when a CUP is submitted it is a drawing that is very similar to this. The key points are the things that have the general provisions on them and describe in general detail provisions that cover the entire CUP. The CUP's are often divided up in different Parcels, so in this case there were 5 Parcels that were submitted originally. Each one of those Parcels then has a unique description to them that includes the proposed use, the floor areas, the building coverage, the number of buildings, and those kinds of things are there, and then the proposed uses are listed for each one of those Parcels.

With respect to whether a proposed use or a permitted use is something unique, I would tell you from the staff perspective they are interchangeable. When we get these if something says permitted or proposed, we don't look at in terms of a different. It doesn't mean something different to staff? Unless someone can show that there is some language somewhere that permitted may be something different, then proposed, the way that we process them, they would be treated the same way, so there is nothing unique about permitted or proposed uses as far as staff is concerned.

Once the CUP is approved, these standards are in place, and if someone needs to change something, then they have a choice to either file an amendment or an adjustment. An adjustment in the current Code is restricted by a certain number of things, and basically an adjustment can be done administratively if it is not a substantial deviation from what was originally approved, and the Code has all these parameters on what substantial is. If you are going beyond what is allowed as an adjustment, then you have to do an amendment which requires full hearing before the Planning Commission, and prior to 1996, it also had to go to the Governing Body. Post 1996, it can stop with the Planning Commission if nobody protest?

Where I am headed is that once you make a change, either for an adjustment or an amendment, if you were collapsing these CUP Parcels or creating new Parcels, you would have to change the numbers in here with respect to how big that parcel was, how much square footage is allowed and so forth. So anybody doing an adjustment that would change the size of the Parcel or increase the square footage or the coverage would have to come in and changed what is listed on here. The way that we handle it now, it is not always changed on the face of the CUP. It can be a letter that is submitted and goes in the file, and the file floats around in the CUP document.

RUANE A CUP is private zoning?

MILLER There is underlying zoning that is granted, and then the CUP provides additional restrictions to that underlying zoning. Currently the way it is set up now, if you applied for Limited Commercial or General Commercial zoning and the entire ownership is over 6 acres in size and is under unified control, you have to file a CUP. It is mandatory.

RUANE How about in 1980?

MILLER The same way. It has been that way since 1957, I believe.

RUANE Is the owner able to pick those permitted or proposed uses provided they are not more intense uses than allowed?

MILLER Correct. If they were asking for LC zoning, they could not ask for uses that were only allowed in GC. The thought process behind the CUP is that it provides an increased level of certainty for the applicant and for adjacent property owners that once it is approved, then those are the only things that are allowed unless there is a subsequent amendment or adjustment, but at the time that they are approved, then they know what they have approved and the adjoining property owners know what has been approved, and are provided theoretical a level of comfort to folks that they have some idea about what the intention is. Obviously, if the market changes or deals fall through, then over time CUP's become amended either by an adjustment or amendment, or they come in and wipe them out and create a new CUP.

DICKGRAFE If you look at covenants and homeowners associations, if I buy a house in a residential area, residential zoning, and they allow me to do this, I may live in an area where they tell me I can't park my boat in the street. With certain other guidelines as to how those change which are made by the government.

FOSTER We are looking at Parcel 4 that was done 1980 on the copy you have?

KNEBEL Parcel 4 was not in it current configuration in 1980. It was combined with Parcel 3 in 1985 to be the size that it is now.

FOSTER What we have in front of us is the 1985 version? This was an Overlay on LC?

MILLER There is multi-family zoning to the north and there maybe some office zoning on one of the Parcel, but I don't' remember for sure.

FOSTER We are talking about personal service and not this whole title in here?

MILLER No, I think in Kurt's letter he has determined that the emergency medical service under the current Code would be defined as a hospital.

SCHROEDER The question is about personal services?

FOSTER I am looking at Parcel 4 on this sheet and it says....

TAPE CHANGE

FOSTER Is there such as thing as personal service, convenience and service orientated retail as a use in the Code? Is this written wrong?

SCHROEDER There wasn't a definition of those terms in the 1980 or 1985 Zoning Code. They did not have service orientated retail, or personal service, convenience defined.

FOSTER This seems to be written odd.

SCHROEDER It is pretty common terminology.

RUANE MOVED MARKHAM SECONDED HAVING CONSIDERED THE ENTIRE RECORD REGARDING THIS MATTER AND HAVING HEARD THE EVIDENCE AS PRESENTED TO THE BOARD HERE TODAY, THE BOARD MAKES THE FOLLOWING FINDINGS:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section 2.12.590 of the Code of the City of Wichita, Kansas.
2. That the Board makes the following of fact:
 - a) That Community Unit Plan zoning and the adoption of a plan such as this is in fact a great use of private property rights rather than a taking by the Zoning Board or Zoning authorities in that it allows the developers and owners of the property to come together and cooperatively map out uses for their property for their mutual benefit and hopefully to add value in the future to their property.
 - b) We must interpret any reference to Zoning Code to mean the Code then in effect. Because although the Code might be subsequently amended or revised we certainly must understand that those parties entering into this contract, per zoning or contract, by which they agree to these restrictions are clearly referring to and understanding the Zoning Code as it existed at that time. You can't see into the future and anticipate further and future revisions to the Code.
 - c) Given the 1985 change that took place to this Zoning Code, we find that Mr. Schroeder's interpretation is quite reasonable, especially because Parcel 4 was being combined with another

Parcel and the only limit to the CUP were those as specified particularly, and that the uses permitted or proposed being not addressed were not appealed. There would have been a specific recitation in 1985 were it anyone's intention at that time to make a significant change to the uses, and that the 1985 amendment goes only in so far particularly because this was a mixed use, and Section 4d and not Section 4a applies.

- d) The language of the CUP (DP-104) limits the use of the parcel at issue to those proposed by the CUP.
 - e) The interpretation made by Kurt Schroeder was supported by the language contained in Wichita-Sedgwick County Unified Zoning Code and of the CUP defining the allowed uses.
 - f) The proposed use of the Parcels for 24-hour emergency care services is not a similar or less intensive use than those allowed by the CUP.
- 3. The Board further finds that the interpretation of the Zoning Administrator as set forth in his letter of August 15, 2004, was reasonable and is supported by the evidence presented at this hearing.
 - 4. The Board further finds that the appellant has not met his burden of proof to show that the interpretation was in error.

THEREFORE, BASED UPON THE FOREGOING, THE BOARD RESOLVES THAT THE INTERPRETATION OF THE ZONING ADMINISTRATOR HEREIN BE AFFIRMED.

Vote 6-0-1 PHILLIPS abstains.

RUANE Item 4, Case No, BZA2004-76, Request variance to reduce the interior side setback on the north from six feet to zero feet on property zoned "SF-5" Single-family Residential, generally located north of 23rd Street North and west of Porter. Applicant Alexander and Dollie Mora.

KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY'S REPORT

CASE NUMBER:	BZA2004-00076
APPLICANT/AGENT:	Alexander and Dollie Mora (Owners/Applicants)
REQUEST:	Variance to reduce the interior side setback on the north from six feet to zero feet
CURRENT ZONING:	"SF-5" Single Family
SITE SIZE:	0.15 acres
LOCATION:	North of 23 rd Street North and west of Porter (2409 N. Porter)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is constructing a single-family residence on the subject property (see attached site plan). According to the applicant (see attached written justification), construction of the house began with the understanding that the subject property had 80 feet of frontage along Porter; however, during the construction process, it was determined that the applicant had only purchased 65 feet of frontage along Porter. Due to a very large tree along the south property line, the house was set back 11 feet from the south property line. Since the house (including an attached single-car garage) is 54 feet wide, the house is constructed up to the north property line. Since the “SF-5” Single Family zoning district requires a six-foot setback along the north property line, the applicant has requested a variance to reduce the interior side setback along the north property line from six feet to zero feet. A variance is required to reduce building setbacks by more than 20 percent.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5”	Single-family residence
SOUTH	“SF-5”	Single-family residence
EAST	“SF-5”	Single-family residence
WEST	R.O.W.	Little Arkansas River

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as there is a very large tree located along the south property line that requires locating any structure on the subject property more than the minimum setback from the south property line in order to preserve the mature tree. Additionally, the abutting property to the north was developed with a house on two lots, and the house is set back over 45 feet from the common property line, which is unique to the development of the surrounding neighborhood.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested will not adversely affect the rights of adjacent property owners, inasmuch as the house on the abutting property to the north is set back over 45 feet from the common property line and sufficient separation between buildings will be provided to prevent any adverse impacts from constructing the house on the subject property with a zero-foot side setback.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to remove the attached single-car garage from the house will be a financial hardship and will prevent full utilization of the property since the garage is needed for a physically disabled resident to access the house during inclement weather.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in supporting infill development in existing residential neighborhoods by providing reasonable flexibility in development regulations.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as sufficient separation between structures will be provided to maintain fire safety and to provide for the circulation of light and air.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the interior side setback on the north from six feet to zero feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. The setback reduction shall apply only to the “Attached Single-Car Garage” as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits necessary to construct the improvements.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER Did they get a building permit to build the house and the garage?

KNEBEL The original permit application showed an 80 foot wide lot as opposed to a 65 foot wide lot. The owner was under the impression that he owned 80 feet, and the building permit writer did not verify that those additional 15 feet were not owned.

FOSTER The building permit person was under the same assumption they were?

KNEBEL I think the building permit writer accepted the application as being valid.

ALEXANDER MORA – Applicant, I bought the land from the nephew, and it shows that I am buying 80 feet frontage, and since it is a little house I thought it would fit on the lot, so we started building on it and everything went all right until we built the garage. This is the first time I ever built anything, so I was not aware of the setbacks, and when I found out we should have 6 foot of setback, the people that laid the foundation for the garage went over about 9 inches. So when we found out, I had them get a hold of the concrete people, and they cut back 9 inches and set the wall back 9 inches, so we are within our property line now. My wife is disabled, and the garage was so she can come in and go out, and the driveway is built in a way like a ramp type, and I have wide doors so that when the time comes she will be able to get around the house real good. The guy that I bought the property from told me that the Title Company had made a mistake, and that he would take care of it, and I haven’t seen or heard from him since.

RANDY PHILLIPS When did you start construction?

MORA Quite sometime ago. I don’t really know.

PHILLIPS In relationship to starting construction, when did you receive your title work?

MORA It was way after we started construction. We kept going back and forth, and it was a long time in coming when we got the title work.

PHILLIPS So you started construction before you had clear title to the property?

MORA Yes, I think so. I bought the property and while we were waiting for the title company which is a long time in coming.

PHILLIPS You don't really own it until you close and take legal title to the property, a clear title. So you started construction before you had clear title and before you actually owned the property?

MORA I already paid for the property. I thought I owned it. I thought that when they sold me the property, and I paid him the money, that the property was mine.

MARKHAM What did he give you when you paid him the money? What paperwork?

MORA No paperwork because I gave him a check for it.

MARKHAM Did you get a receipt for the check?

MORA No.

MARKHAM Did you close on this property at a title company?

MORA No, we went to the title company afterwards, after I paid him. He said we had to go to the title company, and that is when we went, and I thought we owned it then, and we waited for the title company.

MARKHAM Do you have a title to this property?

MORA Yes, we finally got it after the house was well on its way to completion, and they said they were sorry, that was when I found out that I only had 65 feet of the thing.

MARKHAM Do you have the title paperwork now?

MORA Yes, and I have this paper that shows that I bought 80 feet.

DICKGRAFE We need a copy of that.

MORA I was shown the markers when I bought the property.

MARGARET DAWE, I am the next door neighbor. I own 2425 Porter Street. I want to correct three things that Mr. Knebel said. It is not true that work stopped on this property after Central Inspection issued stop work orders, and in fact work continued on the garage and a ticket was written. It is not true that Mr. Mora did not know the lot lines. In fact in September 2003, he cut down two of my trees and three of my bushes, and I went out there and showed him where the lot line was and I asked him to pay for the trees and bushes. I asked him for \$500, and I have never got the money. Mr. Knebel has argued for this variance based on his saying that it was to protect a tree, and Mr. Mora has all but killed the plum tree right on the edge of the garage, and as I said he knocked down two of my trees and three of my bushes, and he knew the size of the property before he began

construction. He waited to start building the garage until after I moved out of the property.

SKELTON What do you mean he waited to build the garage until you moved out of the property?

DAWE The house was built. I moved out in August, and when I came back up because I had a deal to sell my property, my neighbor called me and said you better come and look at this garage because it is over onto your property. I had to get the building inspector out there to stop construction.

MARKHAM You are the one that had the property to the north or south?

DAWE The north. The way that I look at it I am the one who is being asked to provide the setback. I have offered several times to negotiate with him and sell part of the property. The last time I asked him to send me an offer in writing, and I never got an offer, and that was in September 2003.

SKELTON My question is where does the discrepancy come from 65 to 80 feet on the frontage. How did that happen?

RUANE Based upon the applicants statement, it was the misrepresentation of the seller.

DAWE Handing out another paper.

DICKGRAFE Ms. Dawe you may want to wait until the Board has copies of everything that you just handed the Secretary.

KNEBEL That is all one copy.

DAWE I have a kindergartener who gets mad when I am late to pick him up.

RUANE What is this that you want us to look at, tell us real quickly.

DAWE What is it?

RUANE We can't come to a complete halt, what is this you just handed out?

DAWE It is just a statement.

RUANE And you gave us one copy?

DAWE Yes.

RUANE Is it different than the letter from you in our packet?

DAWE That letter is from Helen Drennen, who lives across the street on Porter Street, and she has lived in the neighborhood for 50 years.

RUANE Are you familiar with the letter that she sent?

DAWE Yes.

RUANE Is it correct?

DAWE Yes.

RUANE Does it express roughly what is in the statement that you just handed out?

DAWE Yes, my statement is a little more detailed.

RUANE Randy, you are looking at something do you have a question?

PHILLIPS I believe this is the information from Mr. Mora, and this is the information that you said the seller gave you?

MORA Yes.

PHILLIPS You are Block 5, Lot 9?

MORA Yes.

PHILLIPS The Board is looking at that, and it is basically a plat of the property, and what I see is 65.51 feet on Lot 9. I see nothing where it says 80 feet. There is some verbiage up here that says for the south segment that there is something about the 80 feet of tract. There maybe some confusion about the verbiage up here, but on the property dimension which is typically what people look at.

RUANE To help us move along would Randy tell us the conclusion that you reached on looking at those things.

PHILLIPS We have two different pieces here, one here shows..maybe..

MILLER They are the same thing. The one did not have the legal description. It was laying on the front, so I made one copy.

PHILLIPS The legal description written down here then indicates that it is for the south segment. The south 80 feet of a tract consisting of Lots 7, 8, and 9. There is some verbiage about the 80 feet being the southern portion, which would include the 15 feet beyond that. Was that not notarized or anything?

KNEBEL It was just something he handed out.

MARKHAM But the plat shows the 65.51 frontage.

RUANE That which we are referring to is Exhibit A, and that is what was provided to us by the applicant, and it was provided to support the proposition that he believed that it was 80 feet that he was purchasing.

PHILLIPS It is what it appears to be, and they are trying to describe an overlay on this thing that would be 80 feet by 106 feet along that north property line, but it is nothing binding. I can see where there might be some confusion.

FOSTER Isn't there a general question here in the staff write up? Did they have access to the information that is now being passed around?

RUANE No, I am sure they didn't have access to the information.

KNEBEL To the sheet that Mr. Mora passed out, that is the first time I have seen it.

CHARLOTTE HIMES, 8414 W. 13th #100, Wichita, KS 67212 I am here on behalf of the owner of Lot 7 and Lot 8 and I am her real estate agent, and the property has been on the market for sale.

RUANE You sold the property immediately adjacent to the lot in question?

HIMES No, the property is on the market for sale. I represent that property at 2425 N. Porter for sale. I have been included and have seen, and observed, photographed, a continual construction on this property site.

RUANE Last month you said that the delay would effect a closing, now what happened?

HIMES It delayed a closing because there is a cloud on the property.

RUANE Is it sold or not sold?

HIMES It is never sold until it closed.

RUANE Is it under contract?

HIMES It is under contract.

RUANE Does the buyer under this contract that has not closed know of the situation? Have they seen the construction? Are they aware of the potential encroachment, or the situation of the lot line?

HIMES Yes, as a realtor it is my duty to call all of these things to their attention so that they know outright, forthright, what the situation is. Of course with the stigma of the construction there, which was never kept in a clean workmanship manner, very cluttered, a lot of trespassing, there was a lot of question, and concern from potential buyers.

RUANE But this one buyer is fully informed, and they still wish to buy it?

HIMES Yes, they are fully informed.

RUANE They have a binding contract to purchase the property?

HIMES Actually, because we did not close on the closing date, it is not a binding contract.

RUANE At the time that you did have a binding contract, were they alert to this problem that we are discussing today?

HIMES Yes, we alerted them.

MARKHAM Do you have an extension to a closing date?

HIMES No.

PHILLIPS I am curious, Ms. Himes stood here and obviously had a statement to make, could we maybe hear her statement if she has one.

HIMES I would like to say that I respect the decision of not destroying and preserving the tree on the south side. For whatever reason, I feel that was good. However, whoever made the decision for this applicant to permit him to start his construction 3 feet from the south side without regard and a survey or documentation of his extended property line to the north, I question how did that occur? I think he perhaps very well could have been an innocent purchaser of property. I am sure that each of you will agree with me that when we go out to purchase something, but in real estate I would say purchasing property you pay attention to three specific items. Number one, generally is price and location. Number two, is detail and sizing, in this case I feel the applicant did not have the right size, went forward with his construction and created a lot of chaos and cloud on the property next door. The reason that there is that 15 feet additional next to his garage is because it is owned by the property owner you just heard speak. That property sits on Lots 7 and Lots 8. The applicant's Lot 9 was established on the site plan and on your records here at the City. Those are 65 foot frontages. The uniqueness in my vision, and what I am coming from one tree was preserved, but this gentlemen went ahead and cut down Mrs. Dawe's trees, a lilac bush, two flowering shrubs, and those lots back up to the river and those trees and shrubs have been there, many, many, years, and those were destroyed. That 15 feet beyond her fence line is her property and it had been maintained and it was beautifully maintained. Following some of your Agenda in reference to uniqueness and adjacent property and things the way that I see the story is that there was a mistake made, whether he was aware of his mistake or not, but the hardship is not on the applicant, the hardship has been starting in the year 2003 to the property owner to the north. I think if you will ask him direct questions did he not speak with that property owner and did she not along with a neighbor show him where the plans and the pipes are set from a survey that was done a number of years ago, and then to learn that the property owner to the north was requested by inspection department of this City to pay and have a professional surveyor to prove that she owned the property. My question is, was there a survey requested for Lot 9? Is there one on record with the building permit?

RUANE Was there a survey filed with the building permit?

KNEBEL I don't know.

RUANE Is that a requirement typically?

KNEBEL No.

RUANE How does whomever issues the building permit satisfy themselves that the setbacks requirement are fulfilled?

KNEBEL Based on a drawing submitted by the applicant for the permit.

RUANE Is there a subsequent inspection?

KNEBEL Right.

RUANE The drawing that was submitted shows what?

KNEBEL I don't have it. I don't know.

PHILLIPS It is not a title search. Typically there is a site plan that is submitted that shows location of the property and a legal description provided.

KNEBEL Right, legal description and a boundary.

PHILLIPS Which typically indicates the boundaries, but if that in and of itself is not a legal survey and/or a title survey, so that is typically what Central Inspection gets and they do and issue the permits off of the site plan and not off of the building plan, but the site plan indicates the location of the property setbacks.

HIMES I don't know if this was the drawing, or the site plan that was submitted. That is what I understood from Mr. Knebel, that this was what was issued. He said he did not have a copy. It has been attached to everything that has been mailed to me. Also I have a copy showing the lots, the 65 foot frontages. I also have another question. I have an inspection job, inspection record here. When we called the inspection department because they were working on the garage and extending onto the property a Mr. Jim Garcia was sent to the job. When he saw what was written on here, there is an arrow, and garage written, and it says Ok, 9-8-04, and says J. Garcia. Mr. Garcia indicates that he did not write it, and that is not his doing. How do we explain that? Who did that. Is this why the applicant went ahead and added the garage to the property? He first constructed the house. The property owner to the north moved. Upon her moving and leaving her property, he added the garage. Who signed this documentation?

PHILLIPS I don't think this is something we can review or comment on.

RUANE A number of documents that you are talking about are included in what Mrs. Dawe's handed out just moments ago, but we are trying to share one copy. You are saying that on the building permit, we haven't seen them before, I am not telling you that there is a plot, I am telling you that I don't know that they have been submitted to anyone before this. You are suggesting that Mr. Garcia signature was forged?

HIMES He denies that it is his, and that he did not do it. He became very upset over the whole thing.

RUANE You spoke with him directly?

HIMES The homeowner did. I have spoken with him on the telephone.

RUANE His signature is to ok the section of the garage?

TAPE CHANGE

HIMES It says ok garage, is what it says. If you would like to see it I can show it to you.

RUANE It is on what document?

HIMES It is on the job site inspection report. Do you wish to see it?

RUANE Since we have one copy that we are sharing, I am trying to help you explain to everybody what you are saying.

HIMES I think what I would really like to say is that we talk about hardship on the applicant. It did not seem to bother him hardship-wise to take advantage of the lady next door that owned the property next door, cut down the trees, was shown the property lines, the pins and stakes, and proceeded to cut down the trees and the bushes, and even after adding the garage, he has practically destroyed a beautiful plum tree because it is to close to his garage.

RUANE You say that the property lines were clearly shown to him?

HIMES Clearly shown to him. I know a neighbor who assisted when that was all surveyed. Lot 7, and Lot 8 and Lot 9 and their lot across the street, where she lived for 51 years, so they know the development, and they know the neighborhood. My biggest concern is that we don't need to accept the fact that people make mistakes and they chose to do wrong over right. I feel very strongly that Mr. Mora did know that he was in the wrong and he continued to go right along with his plans. Someone from the City of Wichita should have taken time with Mr. Mora and explained. I am requesting this variance be denied.

PHILLIPS I would like to have the applicant behind the podium to answer a few questions. We have some information in front of us. Part of it you have provided. Part of it came from Mrs. Dawe's, and I am assuming some of this information Mrs. Himes had, in it there is a site plan here that says and appears to say "Mora residence, 2409 N. Porter, Builder 7, Block 5, and it has the City numbers here for the permit, and it is a site plan that shows the dimension and the location of the house as well as the size of the property". This is something you provided to get the permit?

MORA Yes.

PHILLIPS Are you aware of what the dimensions say here? You provided this as part of your building permit?

MORA Yes.

PHILLIPS On this drawing it shows that the house is located on a piece of property that is roughly 108 feet on the north property and 100 feet on the south property, 65.5 on the front and on each side it shows 6'3" of clearance which is also along indicated there roughly the sideyard setback, so if you provided this it is obvious that you know that your house wasn't built according to this?

MORA I provided that when I thought we had an 80 foot front.

PHILLIPS I don't know how you can think that when it says 65 feet here, and everything that we have seen that is legal appears to be 65 feet. The only thing that appears to say

80 feet is a piece of typed paper that has no other validation on it whatsoever. Also, it says in Mrs Dawe's written statement here that she showed you that you had 65 feet before you started construction. Is that correct? So your opinion differs regarding, the timing of when you figured out what your 65 feet was as opposed to when?

MORA When I first found that we only had 65 feet is when we got the papers from the title company.

PHILLIPS You didn't get that back until you started construction. You had to have a permit to start construction, and your site plan you provided that you have 65 feet.

MARKHAM Did you draw this site plan?

MORA Someone drew it for me.

PHILLIPS Who is in charge of construction?

MORA I am. They said I could build it without a general contractor.

PHILLIPS Who did the site layout for you? Who located the footprint of the building to construct?

MORA The people who were doing the framing because of the tree they had to move it over.

PHILLIPS It said on that drawing that you were going to locate that house 6'3" from the property line. Who made that decision and approved that decision to move that?

MORA I approved it to move the thing away from the tree.

PHILLIPS You constructed the house first, and then you started the construction of the garage after you had relocated and started the construction of the house?

MORA Yes, that is because of the money thing.

PHILLIPS moved SKELTON seconded to DENY the variance based on the following:

WHEREAS, Alexander and Dollie Mora (Owners/Applicants); pursuant to Section 2.12.590.B, Code of the City of Wichita, request a Variance to reduce the interior side setback on the north from six feet to zero feet on property zoned "SF-5" Single-family Residential legally described as follows:

Lot 9, Block 5, Builders Seventh Addition, Wichita, Sedgwick County, Kansas.
Generally located north of 23rd Street North and west of Porter (2409 N. Porter).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of December 14, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the property is not substantially unique because of the fact that the original site plan showed would have allowed the building to be built as it is constructed now. The applicant chose not to cut down a tree on his property.

WHEREAS, the Board of Zoning Appeals has found that the rights of adjacent property owners have been adversely affected already inasmuch because you can see that there is a real estate contract that is in jeopardy for that.

WHEREAS, the Board of Zoning Appeals has found that the denial of the variance will not affect a substantial hardship on the applicant inasmuch as he may have another alternative in mind for this.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance would have adverse to the public interest because of the fact that if someone were to decide to build within 6 feet of the property line as they could there is no way to get a fire department access vehicle around that structure.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance would be opposed to the general spirit and intent of the zoning ordinance because of the fact that it is obvious that this was done in a premeditated way and he knew that he did not have room on one side and he tried to build it and has demonstrated cause all along.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, as necessary for the granting of a variance have not been found to exist, the variance is denied.

MOTION CARRIED 7-0.

RUANE Item 5, Case No, BZA2004-84 Request variance to increase the permitted size of a pole sign for a hotel from 100 square feet to 166 square feet on property zoned “GC” General Commercial, generally located north of 47th Street South and west of Broadway. Applicant Value Place South, LLC, %David Redfern; Greg Ferris, Ferris Consulting and Miracle Sign Company Joe Poston (Agents).

KNEBEL, Planning staff presents staff report and slides. Staff recommends denial, subject to the following staff report.

SECRETARY'S REPORT

CASE NUMBER:	BZA2004-00084
APPLICANT/AGENT:	Value Place South LLC c/o David Redfern (Owner/Applicant); Ferris Consulting c/o Greg Ferris and Miracle Sign Company c/o Joe Poston (Agents)
REQUEST:	Variance to increase the permitted size of a pole sign for a hotel from 100 square feet to 166 square feet
CURRENT ZONING:	“GC” General Commercial

SITE SIZE: 2.26 acres
LOCATION: North of 47th Street South and west of Broadway (4665 S. Broadway)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant owns Value Place, an extended-stay hotel generally located north of 47th Street South and west of Broadway at 4665 S. Broadway (see attached site plan). The subject property is zoned “GC” General Commercial, has 30 feet of street frontage, and is permitted a 100 square-foot ground or pole sign by Section 24.04.221.4 of the Sign Code. According to the applicant (see attached written justification), a 166 square-foot pole sign (see attached rendering) is needed for the subject property. A variance is the only method by which the proposed sign may be permitted on the subject property.

ADJACENT ZONING AND LAND USE:

NORTH	“GC”	Auto parts store, vacant commercial property
SOUTH	“GC”	Grocery store
EAST	“GC”	Auto parts store, retail center
WEST	“SF-5”	Single-family residences

UNIQUENESS: It is the opinion of staff that this property is not unique inasmuch as it is common for hotels to be developed at the rear of commercial developments with other commercial uses located in front of the hotel. The subject property has street frontage and is permitted a pole sign, and there is nothing unique about the configuration or location of the property that would dictate the need for a larger pole sign than permitted by the Sign Code. The building is visible from the street, as is building signage, and a 100 square foot sign is sufficiently large to identify the entrance to the property.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will adversely affect the rights of adjacent property owners, inasmuch as the signage along Broadway is relatively controlled with the adjacent signs being smaller than the sign proposed for the subject property. The proposed sign will increase visual clutter along the street and make it more difficult for the signs of adjacent businesses to be seen, especially since the proposed sign would be located only about 35 feet from the nearest other sign, which is over four times closer than the signs would be permitted to be located together were the area developed as a unified development.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Sign Code does not constitute an unnecessary hardship upon the applicant, inasmuch as the Sign Code permits a 100 square-foot pole sign, which is of sufficient size to be visible to traffic along Broadway in order to locate the entrance to the business. It is the opinion of staff that a Variance for the proposed sign is being requested as a matter of convenience as the sign design is the same as is proposed for use at another location for the same hotel chain. The sign could be redesigned, or different sign could be used entirely, to meet the 100 square-foot requirement.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would adversely affect the public interest, inasmuch as the proposed scale of the sign is out of character with area, which contains signs of a smaller size and with a greater separation than proposed. The applicant has proposed the same size sign for another location of the same hotel chain that has over 300 feet of freeway frontage and for which traffic must see the sign in time to take an exit to reach the property. Using the same size sign for the subject property is a good indication that the proposed sign is significantly larger than needed to identify an entrance along an arterial street and is significantly out of scale with the area. The public has an interest in the orderly development of commercial properties that are harmonious with surrounding developments, and granting the requested variance would hinder this public interest.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested is opposed to the general spirit and intent of the Sign Code, inasmuch as the purposes of the Sign Code include eliminating excessive sign displays and balancing the need for a sign while preserving the visual qualities of the community. The proposed sign constitutes an excessive display as it will be larger than existing signs located on adjoining properties and is 66% larger than permitted by the Sign Code. A 100 square-foot sign is permitted for the subject property and is of sufficient size to identify the entrance to the property. Therefore, a 100 square-foot sign sufficiently reaches the balance between the need for a sign and preserving the visual qualities of the community, and granting the Variance for the proposed 166 square-foot sign would exceed this balance.

RECOMMENDATION: It is the recommendation of the Secretary that that all five conditions necessary to the granting of the variance do not exist and that the requested Variance be denied.

GREG FERRIS, FERRIS CONSULTING Value Place is a local company, and it is a new company that is being developed here and across Kansas and then nationwide. They are a growing company. We disagree with the staff report. This property is unique in the sense that if you look in this area that the majority of the hotels in this area and on south Broadway do have frontage on the arterial. They don't have setback. There are a few on 47th Street, but the majority of them on Broadway do have the frontage available. I think it is unique also because of the type of business. Clearly a sign on a hotel is important. When I went down to post the sign and to survey the property, I lived in Wichita many years and I drove past it trying to find it, so I believe that you can't see it, particularly if you are southbound. You cannot see the property in a clear and distinguished manner.

This area is highly developed as commercial and industrial property. There will be no negative impact. There will be nothing that impacts the adjacent properties in a negative way.

We did a mailing, and there is no opposition to this request, because this was notified on a 200 foot basis, so the property that would be most impacted directly in front, the automotive company, is not here to express any concern.

I think the proposed sign is attractive. It is not visual clutter. While it seems that it is a great percentage higher than is allowed, it is not that large of a sign. At 166 square feet it is smaller than a lot of signs. Dillons, who has a enormous frontage to the south of this property, really absorbs this sign so that it does not impact it in a negative way.

I think clearly the hardship is based on the uniqueness as well as the type of business that is required, to be able to have an identity to show where they are at. If you don't have an identity as a hotel, you are in trouble, and I think this clearly establishes that.

I think staff's point of view in there does not demonstrate that this is not in the public interest. It says the public has an interest in orderly development of commercial properties that are harmonious with surrounding developments and granting the requested variance would hinder this public interest. I think clearly from the pictures there is nothing that we are going to do that is going to have any negative impact on the ability for this area to develop as it is already mainly developed.

I think we meet the spirit and intent of the Sign Code. When it comes to signs, is the balance between the size and the visual look and the ability to identify the property and be able to bring people in and show what that is. This is a unique spot. The way that driveway is configured and figure out where you do get in, and I think if you look at it you need something that will draw you to that spot. While it is larger than it is allowed and seems excessive, I don't believe it detracts from that area. I would ask you to find in favor of the applicant today.

FOSTER Scott, have you personally viewed this area?

KNEBEL Yes.

FOSTER Have we had any other variances in this area?

KNEBEL No, I researched the signage in this block, and there are no variances, and this will be the largest sign on the block.

FOSTER This isn't one where we had an earlier standard that allowed larger signs, and now they are smaller?

KNEBEL I think a lot of these properties developed under standards that allowed larger signage.

FOSTER But they didn't develop in that way? This would be the largest sign on the block?

KNEBEL That is correct.

GREENLEE MOVED FOSTER SECONDS

WHEREAS, Value Place South LLC, c/o David Redfern (Owners/Applicants); Ferris Consulting c/o Greg Ferris and Miracle Sign Company c/o Joe Poston (Agents) pursuant to Section 2.12.590.B, Code of the City of Wichita, request a Variance to increase the permitted size of a pole sign for a hotel from 100 square feet to 166 square feet on property zoned "GC" General Commercial legally described as follows:

Lot 1, Block 1, Pay Day Motors Addition to Wichita, Sedgwick County, Kansas. The North 150 feet of the South 180 feet, except the East 226 feet thereof, Block 1, J. George Addition, Wichita, Sedgwick County, Kansas. The South 30 feet of

Lot 1, J. George Addition, Wichita, Sedgwick County, Kansas. Generally located north of 47th Street south and west of Broadway (4665 S. Broadway).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of December 14, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that this property is not unique inasmuch as it is common for hotels to be developed at the rear of commercial developments with other commercial uses located in front of the hotel. The subject property has street frontage and is permitted a pole sign, and there is nothing unique about the configuration or location of the property that would dictate the need for a larger pole sign than permitted by the Sign Code. The building is visible from the street, as is building signage, and a 100 square foot sign is sufficiently large to identify the entrance to the property.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance requested will adversely affect the rights of adjacent property owners, inasmuch as the signage along Broadway is relatively controlled with the adjacent signs being smaller than the sign proposed for the subject property. The proposed sign will increase visual clutter along the street and make it more difficult for the signs of adjacent businesses to be seen, especially since the proposed sign would be located only about 35 feet from the nearest other sign, which is over four times closer than the signs would be permitted to be located together were the area developed as a unified development.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the Sign Code does not constitute an unnecessary hardship upon the applicant, inasmuch as the Sign Code permits a 100 square-foot pole sign, which is of sufficient size to be visible to traffic along Broadway in order to locate the entrance to the business. It is the opinion of staff that a Variance for the proposed sign is being requested as a matter of convenience as the sign design is the same as is proposed for use at another location for the same hotel chain. The sign could be redesigned, or different sign could be used entirely, to meet the 100 square-foot requirement.

WHEREAS, the Board of Zoning Appeals has found that the requested variance would adversely affect the public interest, inasmuch as the proposed scale of the sign is out of character with area, which contains signs of a smaller size and with a greater separation than proposed. The applicant has proposed the same size sign for another location of the same hotel chain that has over 300 feet of freeway frontage and for which traffic must see the sign in time to take an exit to reach the property. Using the same size sign for the subject property is a good indication that the proposed sign is significantly larger than needed to identify an entrance along an arterial street and is significantly out of scale with the area. The public has an interest in the orderly development of commercial properties that are harmonious with surrounding developments, and granting the requested variance would hinder this public interest.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance requested is opposed to the general spirit and intent of the Sign Code, inasmuch as the purposes of the Sign Code include eliminating excessive sign displays and balancing the need for a sign while preserving the visual qualities of the community. The proposed sign constitutes an excessive display as it will be larger than existing signs located on adjoining properties and is 66% larger than permitted by the Sign Code. A 100 square-foot sign is permitted for the subject property and is of sufficient size to identify the entrance to the property. Therefore, a 100 square-foot sign sufficiently reaches the balance between the need for a sign and preserving the visual qualities of the community, and granting the Variance for the proposed 166 square-foot sign would exceed this balance.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, as necessary for the granting of a variance have not been found to exist, the variance is denied.

MOTION carried 6-1. (PHILLIPS opposed).

RUANE Item 6 Report from Central Inspection regarding compliance with requirements of various cases. I would ask to table that report unless there is something of great importance.

SHANER Sounds good to me.

Meeting adjourned at 4:27 p.m.